

**2. RESPONSE**

**2.1 STATUS OF THE CLAIMS**

Claims 41-43, 45-49, 57, 61, and 63-78 were pending at the time of the Final Office Action.

Claims 61, 66, and 71 are amended herein.

Claims 1-60, 62-65, and 73-78 are cancelled herein without prejudice and without disclaimer.

Claims 61 and 66-72 remain pending in the case.

Applicants note for the record that all claims were free from rejection under 35 U. S. C. § 101; 35 U. S. C. § 112, 2<sup>nd</sup> paragraph, 35 U. S. C. § 102, and 35 U. S. C. § 103.

**2.2 SUPPORT FOR THE CLAIMS**

Complete support for each of the claims as amended herein is provided by the specification and original claims as filed. Applicants certify that no new matter has been introduced as a result of the accompanying amendment.

**2.3 THE REQUIRED BIOLOGICAL DEPOSIT INFORMATION IS ENTERED INTO THE SPECIFICATION FOR COMPLIANCE**

Applicants have complied with the Examiner's request to amend the specification to include the language required for compliance with the rules concerning the deposit of biological materials. The two strains deposited with the ATCC have been identified, and the language including the name of the depository, address, accession number, and date of deposits have been

added for compliance. Applicants believe that this fully complies with the rules and requests that the rejection of claims under 35 U. S. C. §112, 1<sup>ST</sup> paragraph.

**2.4 THE REJECTION OF CLAIMS 41-43, 45-49, 57, 61, AND 63-78 UNDER 35 U. S. C. §112, 1<sup>ST</sup> PARAGRAPH, HAS BEEN OVERCOME.**

These claims have been rejected under 35 U. S. C. §112, 1<sup>st</sup> paragraph, as allegedly containing subject matter which was not described in the specification in such as way as to enable one of skill in the art to make and/or use the invention.

Applicants respectfully traverse.

As claims 41-43, 45-49, 57, 63-65, and 73-78 have been cancelled herein without prejudice and without disclaimer, the rejection of these claims is rendered moot.

With respect to claims 61 and 66-72, Applicants have amended the specification to include the required ATCC Accession numbers of the biological materials deposited under terms of the Budapest Treaty, and the required viability statement pursuant to Rule 10.2 and disclaimer. Copies of the viability statements for PTA-4004 and PTA-4296 are attached hereto as Exhibit A. Applicants now believe that the pending claims are free from further rejection under this section of the Statute, and respectfully request that the rejection be withdrawn.

**2.5 THE REJECTION OF CLAIMS 41-43, 45-49, 57, AND 63-78 UNDER 35 U. S. C. §112, 1<sup>ST</sup> PARAGRAPH, HAS BEEN OVERCOME.**

These claims have been rejected under 35 U. S. C. §112, 1<sup>st</sup> paragraph, as allegedly containing subject matter which was not described in the specification in such as way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicants respectfully traverse.

As claims 41-43, 45-49, 57, 63-65, and 73-78 have been cancelled herein without prejudice and without disclaimer, the rejection of these claims is rendered moot.

Without acquiescing in any way on the merits of this rejection, and solely to place the pending claims in condition for allowance, Applicants have elected without prejudice to proceed commercially-relevant aspects of the present case to allowance, and reserve the right to re-file the cancelled claims in a continuing application for the purpose of progressing other aspects of the case to allowance. As such, with respect to claims 61 and 66-72, Applicants request that the rejection be withdrawn, and that the claims proceed to allowance.

**2.6 THE REJECTION OF CLAIMS 73 AND 74 UNDER 35 U. S. C. §112, 1<sup>ST</sup> PARAGRAPH, IS RENDERED MOOT.**

These claims have been rejected under 35 U. S. C. §112, 1<sup>st</sup> paragraph, as allegedly containing subject matter which was not described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Applicants respectfully traverse.

Without acquiescing in any way to the rejection advanced, these claims now being cancelled, the rejection is moot.

**2.7 REQUEST FOR CONTINUING EXAMINATION (RCE)**

The present RCE is filed within the statutory six month period after the Notice of Appeal and is timely in light of the enclosed request for extension of time and fees.

## **2.8 SUBSTANCE OF EXAMINER INTERVIEW**

A telephonic interview was conducted with Examiner Leffers on July 9, 2003. The final office action and the response thereto were discussed. Applicant was notified that an Advisory Action would be forthcoming and that the proposed amendment would not be entered. The Examiner indicated that the biological deposit issue appeared to be resolved following Applicants' foregoing amendment to the Specification. Applicants appreciate the helpfulness of the Examiner during this conversation and his willingness to address the few remaining issues concerning certain claim language.

## **2.9 CONCLUSION**

Applicants appreciate the helpfulness of the Examiner to proceed this case to allowance, and is pleased that the Examiner has concurred in our previous response that the issues relating to prior art have been successfully resolved. Applicants note the Examiner's indication that only a few issues were remaining at the time of the Final Office Action, and are diligently working to address each of these issues to the Office's satisfaction.

In summary, Applicants believe this to be a full, timely and complete response to the outstanding Final Action, and the Advisory Action, and further believe that all pending claims are free of any rejection under the statutes, and that the claims are now placed in condition for allowance through the entry of the accompanying amendment and consideration of the foregoing remarks.

Applicants expressly reserve the rights to re-file claims directed to the remaining embodiments of the invention in subsequent continuing applications. Should the Examiner have

any questions concerning the accompanying amendment, response and related papers, a telephone call to the undersigned Applicants' representative is earnestly solicited.

Respectfully submitted,

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